

# Senate File 323 - Enrolled

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SENATE FILE 323

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1 2  
1 3 AN ACT  
1 4 ESTABLISHING A UNIFORM MEDIATION ACT.  
1 5  
1 6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
1 7  
1 8 Section 1. Section 13.14, subsection 2, Code 2005, is  
1 9 amended to read as follows:  
1 10 2. Confidentiality is also protected as provided in  
1 11 section ~~679C.2~~ 679C.108.  
1 12 Sec. 2. Section 22.7, subsection 37, Code 2005, is amended  
1 13 to read as follows:  
1 14 37. Mediation ~~documents~~ communications as defined in  
1 15 section ~~679C.1~~ 679C.102, except written mediation agreements  
1 16 that resulted from a mediation which are signed on behalf of a  
1 17 governing body. However, confidentiality of mediation  
1 18 ~~documents~~ communications resulting from mediation conducted  
1 19 pursuant to chapter 216 shall be governed by chapter 216.  
1 20 Sec. 3. Section 216.15B, subsection 2, Code 2005, is  
1 21 amended to read as follows:  
1 22 2. If formal mediation is conducted by a mediator pursuant  
1 23 to this section, the confidentiality of all mediation  
1 24 ~~communications and mediation documents~~ is protected as  
1 25 provided in section ~~679C.2~~ 679C.108.  
1 26 Sec. 4. Section 654A.13, Code 2005, is amended to read as  
1 27 follows:  
1 28 654A.13 CONFIDENTIALITY.  
1 29 If mediation is conducted pursuant to this chapter, the  
1 30 confidentiality of all mediation ~~communications and mediation~~  
1 31 ~~documents~~ is protected as provided in section ~~679C.2~~ 679C.108.  
1 32 Sec. 5. Section 679.12, Code 2005, is amended to read as  
1 33 follows:  
1 34 679.12 CONFIDENTIALITY.  
1 35 If mediation is conducted pursuant to this chapter, the  
2 1 confidentiality of all mediation ~~communications and mediation~~  
2 2 ~~documents~~ is protected as provided in section ~~679C.2~~ 679C.108.  
2 3 Sec. 6. NEW SECTION. 679C.101 SHORT TITLE.  
2 4 This chapter shall be known as the "Uniform Mediation Act".  
2 5 Sec. 7. NEW SECTION. 679C.102 DEFINITIONS.  
2 6 As used in this chapter, unless the context otherwise  
2 7 requires:  
2 8 1. "Mediation" means a process in which a mediator  
2 9 facilitates communication and negotiation between parties to  
2 10 assist them in reaching a voluntary agreement regarding their  
2 11 dispute.  
2 12 2. "Mediation communication" means a statement, whether  
2 13 oral or in a record, verbal or nonverbal, that occurs during a  
2 14 mediation or is made for purposes of considering, conducting,  
2 15 participating in, initiating, continuing, or reconvening a  
2 16 mediation or retaining a mediator.  
2 17 3. "Mediation party" means an individual who participates  
2 18 in a mediation and whose agreement is necessary to resolve the  
2 19 dispute.  
2 20 4. "Mediator" means an individual who conducts a  
2 21 mediation.  
2 22 5. "Nonparty participant" means a person, other than a  
2 23 mediation party or mediator, that participates in a mediation.  
2 24 6. "Person" means an individual; corporation; business  
2 25 trust; estate; trust; partnership; limited liability company;  
2 26 association; joint venture; government; governmental  
2 27 subdivision, agency, or instrumentality; public corporation;  
2 28 or any other legal or commercial entity.  
2 29 7. "Proceeding" means any of the following:  
2 30 a. A judicial, administrative, arbitral, or other  
2 31 adjudicative process, including related prehearing and  
2 32 posthearing motions, conferences, and discovery.  
2 33 b. A legislative hearing or similar process.  
2 34 8. "Record" means information that is inscribed on a  
2 35 tangible medium or that is stored in an electronic or other  
3 1 medium and is retrievable in perceivable form.  
3 2 9. "Sign" means any of the following:  
3 3 a. To execute or adopt a tangible symbol with the present  
3 4 intent to authenticate a record.  
3 5 b. To attach or logically associate an electronic symbol,

3 6 sound, or process to or with a record with the present intent  
3 7 to authenticate a record.

3 8 Sec. 8. NEW SECTION. 679C.103 SCOPE.

3 9 1. Except as otherwise provided for in subsections 2 and  
3 10 3, this chapter applies to a mediation that occurs under any  
3 11 of the following circumstances:

3 12 a. The mediation parties are required to mediate by  
3 13 statute or court or administrative agency rule or referred to  
3 14 mediation by a court, administrative agency, or arbitrator.

3 15 b. The mediation parties and the mediator agree to mediate  
3 16 in a record that demonstrates an expectation that mediation  
3 17 communications will be privileged against disclosure.

3 18 c. The mediation parties use as a mediator a person who  
3 19 holds oneself out as a mediator or the mediation is provided  
3 20 by a person who holds oneself out as providing mediation.

3 21 2. This chapter shall not apply to a mediation relating to  
3 22 or conducted by any of the following circumstances:

3 23 a. Relating to the establishment, negotiation,  
3 24 administration, or termination of a collective bargaining  
3 25 relationship.

3 26 b. Relating to a dispute that is pending under or is part  
3 27 of the processes established by a collective bargaining  
3 28 agreement, except that this chapter applies to a mediation  
3 29 arising out of a dispute that has been filed with an  
3 30 administrative agency or court.

3 31 c. Conducted by a judge who might make a ruling on the  
3 32 case.

3 33 d. Conducted at any of the following:

3 34 (1) A primary or secondary school if all the parties are  
3 35 students.

4 1 (2) A correctional institution for youths if all the  
4 2 parties are residents of that institution.

4 3 3. If the mediation parties agree in advance in a signed  
4 4 record, or a record of proceeding reflects agreement by the  
4 5 mediation parties, that all or part of a mediation is not  
4 6 privileged, the privileges under sections 679C.104 through  
4 7 679C.106 do not apply to the mediation or part agreed upon.  
4 8 However, sections 679C.104 through 679C.106 apply to a  
4 9 mediation communication made by a person that has not received  
4 10 actual notice of the agreement before the communication is  
4 11 made.

4 12 Sec. 9. NEW SECTION. 679C.104 PRIVILEGE AGAINST  
4 13 DISCLOSURE == ADMISSIBILITY == DISCOVERY.

4 14 1. Except as otherwise provided in section 679C.106, a  
4 15 mediation communication is privileged as provided in  
4 16 subsection 2 and is not subject to discovery or admissible in  
4 17 evidence in a proceeding unless waived or precluded as  
4 18 provided by section 679C.105.

4 19 2. In a proceeding, the following privileges shall apply:

4 20 a. A mediation party may refuse to disclose, and may  
4 21 prevent any other person from disclosing, a mediation  
4 22 communication.

4 23 b. A mediator may refuse to disclose a mediation  
4 24 communication, and may prevent any other person from  
4 25 disclosing a mediation communication of the mediator.

4 26 c. A nonparty participant may refuse to disclose, and may  
4 27 prevent any other person from disclosing, a mediation  
4 28 communication of the nonparty participant.

4 29 3. Evidence or information that is otherwise admissible or  
4 30 subject to discovery does not become inadmissible or protected  
4 31 from discovery solely by reason of its disclosure or use in a  
4 32 mediation.

4 33 Sec. 10. NEW SECTION. 679C.105 WAIVER AND PRECLUSION OF  
4 34 PRIVILEGE.

4 35 1. A privilege under section 679C.104 may be waived in a  
5 1 record or orally during a proceeding if it is expressly waived  
5 2 by all mediation parties and if all of the following apply:

5 3 a. In the case of the privilege of a mediator, the  
5 4 privilege is expressly waived by the mediator.

5 5 b. In the case of the privilege of a nonparty participant,  
5 6 the privilege is expressly waived by the nonparty participant.

5 7 2. A person that discloses or makes a representation about  
5 8 a mediation communication which prejudices another person in a  
5 9 proceeding is precluded from asserting a privilege under  
5 10 section 679C.104, but only to the extent necessary for the  
5 11 person prejudiced to respond to the disclosure or  
5 12 representation.

5 13 3. A person that intentionally uses a mediation to plan,  
5 14 to attempt to commit, or to commit a crime, or to conceal an  
5 15 ongoing crime or ongoing criminal activity is precluded from  
5 16 asserting a privilege pursuant to section 679C.104.

5 17 Sec. 11. NEW SECTION. 679C.106 EXCEPTIONS TO PRIVILEGE.

5 18 1. No privilege exists under section 679C.104 for a  
5 19 mediation communication that involves any of the following:

5 20 a. An agreement evidenced by a record signed by all  
5 21 mediation parties to the agreement.

5 22 b. A communication that is available to the public under  
5 23 chapter 22 or made during a session of a mediation which is  
5 24 open, or is required by law to be open, to the public.

5 25 c. A threat or statement of a plan to inflict bodily  
5 26 injury or commit a crime of violence.

5 27 d. A plan to commit or attempt to commit a crime, the  
5 28 commission of a crime, or activity to conceal an ongoing crime  
5 29 or ongoing criminal activity.

5 30 e. A communication that is sought or offered to prove or  
5 31 disprove a claim or complaint of professional misconduct or  
5 32 malpractice filed against a mediator.

5 33 f. Except as otherwise provided in subsection 3, a  
5 34 communication that is sought or offered to prove or disprove a  
5 35 claim or complaint of professional misconduct or malpractice  
6 1 filed against a mediation party, nonparty participant, or  
6 2 representative of a mediation party based on conduct occurring  
6 3 during a mediation.

6 4 g. A communication that is sought or offered to prove or  
6 5 disprove abuse, neglect, abandonment, or exploitation in a  
6 6 proceeding in which a child or adult protective services  
6 7 agency is a party, unless the child or adult protection case  
6 8 is referred by a court to mediation and a public agency  
6 9 participates.

6 10 2. There is no privilege under section 679C.104 if a  
6 11 court, administrative agency, or arbitrator finds, after a  
6 12 hearing in camera, that the party seeking discovery or the  
6 13 proponent of the evidence has shown that the evidence is not  
6 14 otherwise available, that there is a need for the evidence  
6 15 that substantially outweighs the interest in protecting  
6 16 confidentiality, and that the mediation communication is  
6 17 sought or offered in any of the following situations:

6 18 a. A court proceeding involving a felony or misdemeanor.

6 19 b. Except as otherwise provided in subsection 3, a  
6 20 proceeding to prove a claim to rescind or reform a contract or  
6 21 a defense to avoid liability on a contract arising out of the  
6 22 mediation.

6 23 3. A mediator shall not be compelled to provide evidence  
6 24 of a mediation communication referred to in subsection 1,  
6 25 paragraph "f", or subsection 2, paragraph "b".

6 26 4. If a mediation communication is not privileged under  
6 27 subsection 1 or 2, only the portion of the communication  
6 28 necessary for the application of the exception from  
6 29 nondisclosure may be admitted. Admission of evidence under  
6 30 subsection 1 or 2 does not render the evidence, or any other  
6 31 mediation communication, discoverable or admissible for any  
6 32 other purpose.

6 33 Sec. 12. NEW SECTION. 679C.107 PROHIBITED MEDIATOR  
6 34 REPORTS.

6 35 1. Except as required in subsection 2, a mediator shall  
7 1 not make a report, assessment, evaluation, recommendation,  
7 2 finding, or other communication regarding a mediation to a  
7 3 court, administrative agency, or other authority that may make  
7 4 a ruling on the dispute that is the subject of the mediation.

7 5 2. A mediator may disclose any of the following:

7 6 a. Whether the mediation occurred or has terminated,  
7 7 whether a settlement was reached, and attendance.

7 8 b. A mediation communication as permitted under section  
7 9 679C.106.

7 10 c. A mediation communication evidencing abuse, neglect,  
7 11 abandonment, or exploitation of an individual to a public  
7 12 agency responsible for protecting individuals against such  
7 13 mistreatment.

7 14 3. A communication made in violation of subsection 1 shall  
7 15 not be considered by a court, administrative agency, or  
7 16 arbitrator.

7 17 Sec. 13. NEW SECTION. 679C.108 CONFIDENTIALITY.

7 18 Unless subject to chapter 21 or 22, mediation  
7 19 communications are confidential to the extent agreed to by the  
7 20 parties or provided by other law or rule of this state.

7 21 Sec. 14. NEW SECTION. 679C.109 MEDIATOR'S DISCLOSURE OF  
7 22 CONFLICTS OF INTEREST == BACKGROUND.

7 23 1. Before accepting a mediation, an individual who is  
7 24 requested to serve as a mediator shall do all of the  
7 25 following:

7 26 a. Make an inquiry that is reasonable under the  
7 27 circumstances to determine whether there are any known facts

7 28 that a reasonable individual would consider likely to affect  
7 29 the impartiality of the mediator, including a financial or  
7 30 personal interest in the outcome of the mediation and an  
7 31 existing or past relationship with a mediation party or  
7 32 foreseeable participant in the mediation.  
7 33 b. Disclose any such known fact to the mediation parties  
7 34 as soon as is practical before accepting a mediation.  
7 35 2. If a mediator learns any fact described in subsection 1  
8 1 after accepting a mediation, the mediator shall disclose it as  
8 2 soon as is practicable.  
8 3 3. At the request of a mediation party, an individual who  
8 4 is requested to serve as a mediator shall disclose the  
8 5 mediator's qualifications to mediate a dispute.  
8 6 4. A person that violates subsection 1, 2, or 7 is  
8 7 precluded by the violation from asserting a privilege under  
8 8 section 679C.104.  
8 9 5. Subsections 1, 2, 3, and 7 do not apply to an  
8 10 individual acting as a judge.  
8 11 6. This chapter does not require that a mediator have a  
8 12 special qualification by background or profession.  
8 13 7. A mediator must be impartial, unless after disclosure  
8 14 of the facts required in subsections 1, 2, and 3 to be  
8 15 disclosed, the parties agree otherwise.

8 16 Sec. 15. NEW SECTION. 679C.110 PARTICIPATION IN  
8 17 MEDIATION.

8 18 An attorney or other individual designated by a mediation  
8 19 party may accompany the mediation party to and participate in  
8 20 a mediation. A waiver of participation given before the  
8 21 mediation may be rescinded.

8 22 Sec. 16. NEW SECTION. 679C.111 RELATION TO ELECTRONIC  
8 23 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

8 24 The provisions of this chapter modify or supersede the  
8 25 federal Electronic Signatures in Global and National Commerce  
8 26 Act, 15 U.S.C. } 7001 et seq., but this chapter does not  
8 27 modify, limit, or supersede section 101c of that Act or  
8 28 authorize electronic delivery of any of the notices described  
8 29 in section 103b of that Act.

8 30 Sec. 17. NEW SECTION. 679C.112 UNIFORMITY OF APPLICATION  
8 31 AND CONSTRUCTION.

8 32 In applying and construing this chapter, consideration  
8 33 should be given to the need to promote uniformity of the law  
8 34 among states that enact the uniform mediation Act.

8 35 Sec. 18. NEW SECTION. 679C.113 SEVERABILITY CLAUSE.

9 1 If any provision of this chapter or the application thereof  
9 2 to any person or circumstance is held invalid, the invalidity  
9 3 shall not affect other provisions or applications of this  
9 4 chapter which can be given effect without the invalid  
9 5 provision or application, and to this end, the provisions of  
9 6 this chapter are severable.

9 7 Sec. 19. NEW SECTION. 679C.114 APPLICATION TO EXISTING  
9 8 AGREEMENTS OR REFERRALS.

9 9 1. This chapter governs a mediation pursuant to a referral  
9 10 or an agreement to mediate made on or after July 1, 2005.

9 11 2. On or after July 1, 2005, this chapter governs an  
9 12 agreement to mediate whenever made.

9 13 Sec. 20. NEW SECTION. 679C.115 MEDIATOR IMMUNITY.

9 14 A mediator or a mediation program shall not be liable for  
9 15 civil damages for a statement, decision, or omission made in  
9 16 the process of mediation unless the act or omission by the  
9 17 mediator or mediation program is made in bad faith, with  
9 18 malicious purpose, or in a manner exhibiting willful or wanton  
9 19 disregard of human rights, safety, or property. This section  
9 20 shall apply to mediation conducted before the workers'  
9 21 compensation commissioner and mediation conducted pursuant to  
9 22 chapter 216.

9 23 Sec. 21. Chapter 679C, Code 2005, is repealed.

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9 26 \_\_\_\_\_  
9 27 JOHN P. KIBBIE  
9 28 President of the Senate  
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9 31 \_\_\_\_\_  
9 32 CHRISTOPHER C. RANTS  
9 33 Speaker of the House

9 34 I hereby certify that this bill originated in the Senate and  
9 35 is known as Senate File 323, Eighty-first General Assembly.

MICHAEL E. MARSHALL  
Secretary of the Senate

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10 6 Approved \_\_\_\_\_, 2005

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10 10 THOMAS J. VILSACK  
10 11 Governor